

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7279

DATE RECEIVED: September 26, 2017

DATE OF NOTIFICATION: September 28, 2017

LAST RESPONSE RECEIVED: October 31, 2017

DATE ACTIVATED: December 1, 2017

EARLIEST SOL: October 17, 2021

LATEST SOL: October 17, 2021

ELECTION CYCLE: 2016

SOURCE:

Common Cause

Karen Hobert Flynn

RESPONDENT:

Michael Waddell

Bone Collector, LLC

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(9)(A)(i), (17)

52 U.S.C. § 30104(c)(1)

52 U.S.C. § 30116(a)

52 U.S.C. § 30118(a)

52 U.S.C. § 30120

11 C.F.R. § 100.16

11 C.F.R. § 100.22

11 C.F.R. § 100.52

11 C.F.R. § 100.94

11 C.F.R. § 100.111

11 C.F.R. § 109.23(a)

11 C.F.R. § 110.1(g)

11 C.F.R. § 114.1(a)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Michael Waddell and Bone Collector, LLC ("Bone Collector") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to disclose independent expenditures, failing to include required disclaimers on Facebook

1 posts, and making excessive in-kind contributions to Donald J. Trump for President, Inc.
2 ("Committee").

3 Specifically, the Complaint alleges that Waddell paid to promote a Facebook post
4 supporting Trump's candidacy but failed to disclose the payment as an independent expenditure
5 or include required disclaimers.¹ Further, the Complaint cites a second Facebook post that
6 supports Trump and links to the Bone Collector website, which republishes a video produced by
7 the Trump campaign.² The Complaint alleges that this republication constitutes an excessive in-
8 kind contribution to the Trump Committee.³

9 In response, Waddell states that he has not violated the Act because: (1) he spent less
10 than \$250 to promote his post; (2) this paid post did not require a disclaimer because it did not
11 contain express advocacy; and (3) he did not pay to republish Trump campaign materials.⁴

12 As set forth below, available information indicates that Waddell spent \$99.96 to make
13 one independent expenditure and did not include any disclaimer in that communication.
14 Accordingly, we recommend that the Commission find no reason to believe that Waddell
15 violated the Act by failing to report independent expenditures exceeding the \$250 reporting
16 threshold. Further, we recommend dismissing the allegation that Waddell failed to include the
17 required disclaimer in this communication because the communication gave the viewer at least
18 some indication who was responsible for the message.

¹ Compl. ¶¶ 8, 22-23, 27-28 (Sept. 26, 2017).

² *Id.* ¶¶ 6-7.

³ *Id.* ¶¶ 24-26.

⁴ Resp. at 4-6 (Oct. 31, 2017). Bone Collector has not separately responded. While the response states that Waddell is a "part-owner of 'Bone Collector, LLC,'" and lists "Bone Collector" under his name in the address block, the title of the response indicates only that it is "Mr. Waddell's Response to Complaint." *Id.* at 1.

Also as discussed below, it appears that by republishing, in whole, the Trump campaign's video on the Bone Collector website, Bone Collector made a potentially excessive in-kind contribution to the Trump Committee, or, if Bone Collector is a corporation, an impermissible contribution to which Waddell consented. While the exact value of this in-kind contribution is unknown, it is likely modest, and thus does not justify the use of the Commission's investigatory resources. Accordingly, we recommend that the Commission dismiss allegations that Waddell and Bone Collector violated 52 U.S.C. §§ 30116(a) and 30118(a).

II. FACTS

A. Michael Waddell and Bone Collector, LLC

Michael Waddell is the founder and part-owner of Bone Collector, LLC.⁵ Bone Collector is registered as an LLC in both Illinois and Georgia.⁶ Through its website, bonecollector.com, Bone Collector sells various products including hunting equipment, apparel featuring the Bone Collector logo, and DVDs of the Bone Collector television show on the Outdoor Channel, which features Waddell.⁷ Also included on the website is the "Brotherhood Blog," which includes posts featuring videos of Waddell and others demonstrating hunting techniques and promoting hunting products. Based on the overt nature of these product endorsements,⁸ links from the blog directly to the websites of the companies selling these products, and a link on bonecollector.com soliciting companies that may be interested in

⁵ Michael Waddell Aff. ¶ 3 (Oct. 31, 2017).

⁶ Bone Collector, LLC, Registration with Ill. Sec. of St., available through search at: <https://www.ilsos.gov/corporatellc/CorporateLlcController>; Bone Collector, LLC, Registration with Ga. Corp Div., <https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1350723&businessType=Domestic%20Limited%20Liability%20Company>.

⁷ See <https://www.bonecollector.com>.

⁸ See, e.g., <https://www.bonecollector.com/3-great-things-non-typical-clothing-drake/>.

1 advertising with Bone Collector,⁹ it appears that these Brotherhood Blog posts are often
2 commercial endorsements paid for by companies selling products featured on the blog.

3 Waddell and Bone Collector also maintain a Facebook page, "Michael Waddell's Bone
4 Collector," which has been "liked" over 900,000 times.¹⁰ On this page, Waddell posts text,
5 images, and videos about hunting, and in the months leading up to the 2016 presidential election,
6 he also posted material supporting then-candidate Donald Trump and opposing Hillary Clinton.¹¹
7 The page also promotes the Bone Collector's brand and products through posts, as well as links
8 through which visitors may buy Bone Collector products directly.¹²

9 **B. "Michael Waddell's Bone Collector" Sponsored Facebook Post**

10 Among the posts on the "Michael Waddell's Bone Collector" Facebook page, two are
11 particularly relevant to this matter.¹³ The first involves a video of Waddell stating that Hillary
12 Clinton does not support "our hunting heritage."¹⁴ The response explains that, at the request of
13 Keith Mark, a friend in the hunting industry, Waddell recorded a 24-second video that was later
14 incorporated in a longer video the Trump campaign produced entitled "Heartland for Trump."¹⁵

⁹ <https://www.bonecollector.com/advertising/>.

¹⁰ Compl. ¶ 5.

¹¹ <https://www.facebook.com/officialbonecollector/>

¹² *Id.*

¹³ An additional related post on the Facebook timeline, posted September 26, 2016, also includes a link directly to the Heartland for Trump campaign video on YouTube and is accompanied by the following text: "Really cool video from outdoorsmen prospective. Please watch and share. Waddy." Michael Waddell's Bone Collector, Post to Facebook (Sept. 26, 2016), <https://www.facebook.com/officialbonecollector/posts/10155207745784409>. The response does not address this additional post. It does not appear that any payment was made to promote the post.

¹⁴ Resp. at 7.

¹⁵ Waddell Aff. ¶¶ 6-8. Like Waddell, Keith Mark is a personality featured in hunting shows on the Outdoor Channel. See <http://outdoorchannel.com/keith-mark-hunter-and-outfitter>.

1 The response further states that the 24-second video was shot with Waddell's own camera and
2 with the help of "an experienced camera operator," who shot the video "as a favor."¹⁶ Waddell
3 indicates that the total time spent recording this video was five-to-ten minutes.¹⁷ In the video,
4 Waddell states:

5 I'm so proud to be from a hunting family. And I can tell you I
6 thank God every day for having an opportunity to put food on my
7 table for my family, just like so many families before us. And
8 when hunting becomes politically incorrect, let me tell you
9 something. America has lost its way. And I believe personally that
10 Hillary Clinton will never, ever support our hunting heritage.¹⁸
11

12 According to Waddell, on September 24, 2016, he paid \$99.96 to Facebook to promote or
13 "boost"¹⁹ the distribution of the post containing this 24-second video, which gathered 104,595
14 "impressions" on Facebook.²⁰ Waddell provides a receipt to confirm the amount of this
15 payment, which is also supported by his sworn affidavit.²¹ Though this post no longer appears in
16 Waddell's Facebook timeline, it can be viewed by following a link provided by the response.²²
17 The link shows four versions of the promoted post that Facebook users saw, each of which
18 included either the text: "#TrumpTrain #Trump2016" or "Sportsmen for Trump 2016."²³

¹⁶ Waddell Aff. ¶ 8.

¹⁷ *Id.* ¶¶ 7-8.

¹⁸ Resp. at 7.

¹⁹ Facebook allows users to advertise by turning an ordinary post into an ad that will appear on the Facebook pages of a targeted audience even though many in that audience do not currently follow the person posting. See https://www.facebook.com/business/help/240208966080581?helpref=page_content.

²⁰ In short, Facebook defines "impressions" as "the number of times your ads were on screen." <https://www.facebook.com/business/help/675615482516035>. Resp. at 3, Ex. 2.

²¹ *Id.*, Ex. 2; Waddell Aff. ¶ 9.

²² Resp. at 7 (citing Facebook Ad Experience preview (Sept. 24 2016), https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816).

²³ Facebook Ad Experience preview, https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816. The first and second

1 **C. Heartland for Trump Campaign Video**

2 As noted above, Waddell states that he gave the 24-second video to Keith Mark and it
3 was later incorporated into the Heartland for Trump campaign video.²⁴ The Heartland for Trump
4 video is eight minutes and ten seconds long and features Donald Trump, Donald Trump, Jr., and
5 a number of hunting and outdoor television show personalities, including Waddell and Mark.²⁵
6 It appears to be an official Trump campaign video and includes a disclaimer at the end that it is
7 "Paid for by Donald J. Trump for President, Inc."²⁶ The available information does not indicate
8 whether Waddell shot the video so that it could be later incorporated into the Heartland for
9 Trump video, nor does it explain the relationship between Mark and the Trump campaign,
10 including whether Mark was acting on the campaign's behalf or whether he or the campaign had
11 input into the content of Waddell's video.²⁷

12 **D. Republication of Heartland for Trump Video**

13 A screenshot of the second relevant Facebook post by Waddell appears below, and as of
14 the date of this report, the post still appears on his timeline.²⁸

versions both include the text: "#TrumpTrain #Trump2016." *Id.* The third and fourth versions include the text:
"Sportsmen for Trump 2016." *Id.*

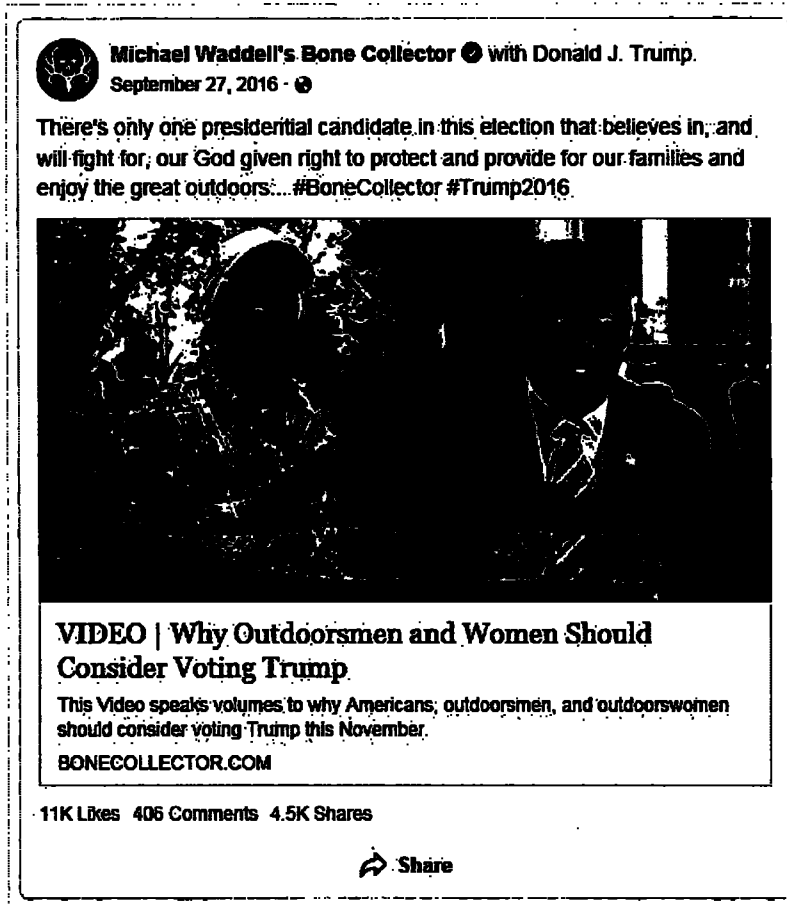
²⁴ Waddell Aff. ¶ 6. See Heartland for Trump (Sept. 26 2016),
https://www.youtube.com/watch?time_continue=10&v=k0J_EKmvYZk.

²⁵ *Id.*

²⁶ *Id.*

²⁷ A review of the Committee's disclosure reports to the Commission indicates that the Committee made no
disbursements to Mark in the 2016 campaign cycle.

²⁸ Compl. ¶ 6 (citing Michael Waddell's Bone Collector, Post to Facebook (Sept. 27, 2016),
<https://www.facebook.com/officialbonecollector/posts/10155210022799409>). Facebook indicates that this post was
liked 11,000 times, commented on 406 times, and shared 4,500 times. *Id.*



- 1
- 2 This post links to a Brotherhood Blog post on the Bone Collector website. This Brotherhood
- 3 Blog post, titled "Trump For President | Why Outdoorsmen and Women Should Consider Voting
- 4 Trump," republishes the Heartland for Trump video created by the Trump campaign and includes
- 5 a link to the Trump Committee's website.²⁹ Waddell avers that he "did not spend any money
- 6 boosting or promoting this Facebook post."³⁰

²⁹ <https://www.bonecollector.com/video-outdoorsmen-women-consider-voting-trump/>.

³⁰ Resp. at 3; Waddell Aff. ¶ 10.

III. LEGAL ANALYSIS

A. Independent Expenditure Disclosure

The complaint alleges that Waddell and Bone Collector violated the Act by failing to disclose as an independent expenditure the boosted Facebook post containing the 24-second video of Waddell.³¹ The Act defines "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office."³² An "independent expenditure" is an expenditure by a person expressly advocating the election or defeat of a clearly identified federal candidate that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.³³ Every person, other than a political committee, who makes independent expenditures over \$250 in a calendar year must disclose those expenditures in reports to the Commission.³⁴

In determining whether a communication contains express advocacy, the Commission analyzes the message under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b).³⁵ A communication expressly advocates the election or defeat of a clearly

³¹ Compl. ¶¶ 22-23.

³² 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111.

³³ 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16. *See also* 11 C.F.R. § 100.16(c) (excluding from the definition of independent expenditure "if the person making the expenditure allows a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the costs of production or dissemination with any such person.").

³⁴ 52 U.S.C. § 30104(c)(1).

³⁵ Political Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007) (supplemental explanation and justification).

1 identified federal candidate under Section 100.22(a) if it uses phrases including, but not limited
2 to, "Support the Democratic nominee" and "vote against Old Hickory" or "'defeat' accompanied
3 by a picture of one or more candidates," or "reject the incumbent," or "communications of
4 campaign slogan(s) or individual word(s), which in context can have no other reasonable
5 meaning than to urge the election or defeat of one or more clearly identified candidates such as
6 posters, bumper stickers, advertisements, etc., which say 'Nixon's the One,' 'Carter '76,'
7 'Reagan/Bush,' or 'Mondale!'" or "vote Pro-Life" or "vote Pro-Choice" with a listing of clearly
8 identified candidates described as Pro-Life or Pro-Choice.³⁶ Express advocacy also encompasses
9 a communication that contains "in effect an explicit directive" to vote for or against a
10 candidate.³⁷ The fact that this message is marginally less direct than "Vote for Smith" does not
11 change its essential nature.³⁸

12 Waddell claims that the boosted video does not contain express advocacy language and
13 therefore is not an independent expenditure.³⁹ The text accompanying the video in the post,
14 however, including "#TrumpTrain #Trump2016" and "Sportsmen for Trump 2016," constitutes
15 express advocacy.⁴⁰ Similar to the examples included in the regulation, these hashtags/slogans
16 included in Waddell's post "in context can have no other reasonable meaning than to urge the

³⁶ 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as "Smith for Congress" and "Bill McKay in '94," have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-95 (July 6, 1995) (explanation and justification).

³⁷ *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when "it provides, in effect, an explicit directive" to vote for the named candidates) ("*MCFL*").

³⁸ *See MCFL*, 479 U.S. at 249.

³⁹ *Resp.* at 5.

⁴⁰ Facebook Ad Experience preview, https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816. *See supra* n.23.

1 election or defeat of one or more clearly identified candidates.”⁴¹ Therefore, this Facebook post
2 that Respondents paid to promote is an independent expenditure.⁴²

3 Waddell provided a receipt for the promotion of this post, however, which supports his
4 sworn statement that he paid \$99.96,⁴³ which is below the \$250 reporting threshold.⁴⁴ In
5 addition, Waddell claims that production of this 24-second video involved only volunteers
6 (Waddell and the camera operator who shot the video “as a favor”); it took ten minutes or less of
7 Waddell’s time to record; and the video was recorded with Waddell’s own camera.⁴⁵ We have
8 no contrary information. Thus, the cost to produce the video appears minimal and likely would
9 not have increased the total cost of the independent expenditure over the \$250 threshold.
10 Therefore, we recommend that the Commission find no reason to believe that Waddell or Bone
11 Collector violated the Act by failing to disclose this independent expenditure.

12 **B. Disclaimers**

13 The Complaint further alleges that Waddell and Bone Collector failed to include a
14 required disclaimer on the Facebook post discussed above.⁴⁶ All “public communications” by a

⁴¹ 11 C.F.R. § 100.22(a). In addition to satisfying the test for express advocacy under 100.22(a), the post likely satisfies the standard for express advocacy under 100.22(b). However, because the communication clearly satisfies 100.22(a), it is unnecessary to analyze it under 100.22(b) to make reason to believe findings in this particular case.

⁴² We have elected to analyze this activity as an independent expenditure, as alleged in the complaint, rather than as a potential in-kind contribution as there is insufficient information that the communication was coordinated with the Trump campaign. While the recording of this video was done at Mark’s request, and it was ultimately incorporated into the Heartland for Trump video, we have no information indicating that the Trump campaign was involved in determining the content of this 24-second video or Waddell’s posting of the 24-second video to Facebook.

⁴³ See Waddell Aff. ¶ 9; Resp., Ex. 2.

⁴⁴ See 52 U.S.C. § 30104(c)(1).

⁴⁵ Waddell Aff. ¶ 7-8.

⁴⁶ Compl. ¶¶ 27-28.

1 person that expressly advocate the election or defeat of a federal candidate must contain
2 appropriate disclaimers.⁴⁷ "Public communications" include "general public political
3 advertising," which includes communications over the Internet when those communications are
4 "placed for a fee on another person's Web site."⁴⁸

5 Respondents assert that they are not subject to these disclaimer provisions because the
6 boosted video posted to Facebook does not contain express advocacy.⁴⁹ As discussed above, the
7 paid post includes the hashtags/slogans "#TrumpTrain #Trump2016" and "Sportsmen for Trump
8 2016," which are express advocacy. Respondents acknowledge that a fee was paid to boost this
9 post.⁵⁰ Therefore, the post is a public communication containing express advocacy, and the Act
10 appears to require a disclaimer in such circumstances.

11 However, in three of the four versions of the post, "Michael Waddell's Bone Collector"
12 appeared on the top of the post, which provided the public with some information as to the
13 persons responsible for the message. Under these circumstances, we recommend that the
14 Commission dismiss the allegation.⁵¹

⁴⁷ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

⁴⁸ 11 C.F.R. § 100.26; *see also* Regulations of Internet Communications 71 Fed. Reg. 18,589, 18,593-94 (Apr. 12, 2006) (explanation and justification) ("2006 Internet Communications E&J"); Advisory Op. 2017-12 (Take Back Action Fund).

⁴⁹ Resp. at 6-8.

⁵⁰ Resp. at 6.

⁵¹ Compare with Factual & Legal Analysis at 5-6, MUR 7039 (Bernie 2016, *et al.*) (dismissing allegation that Facebook ad did not include a required disclaimer where the ad provided some information to the public indicating the Committee that was responsible for the ad, including the committee's web address, the landing page of which included a fully compliant disclaimer). *See also* EPS Dismissal Report at 2, MUR 7065 (Joe Montes for Congress 2016) (dismissing allegation regarding the failure to include the required disclaimer where "it is unlikely that the general public would have been misled"); EPS Dismissal Report at 2-3, MUR 6904 (Cat Ping for Congress) (dismissing allegation regarding the failure to include the required disclaimer citing the small amount at issue and unlikelihood that the public was misled as to who paid for the website).

C. Alleged Prohibited and Excessive In-Kind Contributions

Finally, as a result of republishing the Heartland for Trump campaign video, Waddell and Bone Collector may have made prohibited or excessive in-kind contributions to the Trump Committee. During the 2016 election cycle, no individual could make a contribution to a candidate and the candidate's authorized political committee with respect to any election for federal office that in the aggregate exceeded \$2,700.⁵² Further, the Act prohibits corporations from making contributions to candidates or their committees in connection with federal elections and prohibits corporate officers and directors from consenting to such corporate contributions.⁵³

A "contribution" includes any direct or indirect payment, gift of money, or "anything of value" made to any candidate or campaign committee in connection with any federal election.⁵⁴ "Anything of value" includes in-kind contributions, such as the provision of goods or services without charge, or at a charge less than the usual and normal charge.⁵⁵ Commission regulations specify that impermissible corporate contributions include providing free or reduced-charge facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.⁵⁶ Moreover, Commission regulations state that the republication of campaign materials prepared by a candidate's authorized committee is "considered a[n in-kind] contribution for the

⁵² 52 U.S.C. § 30116(a)(1)(A).

⁵³ 52 U.S.C. § 30118(a).

⁵⁴ 52 U.S.C. § 30118(b)(2); 11 C.F.R. §§ 100.52(d)(1), 114.1(a)(1); *see also* 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

⁵⁵ 11 C.F.R. § 100.52(d)(1). The Commission's regulations define "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R. § 100.52(d)(2).

⁵⁶ *See* 11 C.F.R. § 100.52(d)(1).

1 purposes of contribution limitations”⁵⁷ because the person financing the republication “has
2 provided something of value to the candidate [or] authorized committee.”⁵⁸

3 Here, the post to the Brotherhood Blog (on the Bone Collector website) that republishes
4 the Heartland for Trump video is such an in-kind contribution. As discussed above, the
5 Brotherhood Blog consists of a series of posts, many of which appear to be paid endorsements
6 for hunting products.⁵⁹ Thus, it appears this blog is not simply a forum for Waddell to discuss
7 hunting, but it is also a location for paid advertisements. While makers of various hunting
8 products have paid to place their ads on the Brotherhood Blog, this republished Trump campaign
9 video appears to have been placed for free. Therefore, this republication of the Heartland for
10 Trump video on the Bone Collector’s Brotherhood Blog appears to constitute providing
11 “advertising services” “without charge or at a charge that is less than the usual and normal
12 charge” and falls within the regulation’s definition of an in-kind contribution.⁶⁰

13 Respondents argue that because Waddell spent no money to boost the post that
14 republishes Trump campaign materials, “it does not fall within the restrictions of 11 C.F.R.
15 § 109.23(a).”⁶¹ Indeed, Waddell has not made an in-kind contribution via this Facebook post,

⁵⁷ 11 C.F.R. § 109.23(a).

⁵⁸ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification). As the Commission there explained, “Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit” and can be reasonably construed only as for the purpose of influencing an election.” *Id.* at 443 (emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (June 8, 2006) (explanation and justification) (communications “that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.”).

⁵⁹ See *supra* pp. 3-4, n.8.

⁶⁰ 11 C.F.R. § 100.52(d)(1).

⁶¹ Resp. at 6.

1 but for a different reason. Instead, his activity is not considered a contribution because
2 Commission regulations create an exception for “uncompensated Internet activities.”⁶² Such
3 Internet activities include but are not limited to: “Sending or forwarding electronic messages;
4 providing a hyperlink or other direct access to another person’s Web site; blogging; creating,
5 maintaining, or hosting a Web site; paying a nominal fee for the use of another person’s Web
6 site; and any other form of communication distributed over the Internet.”⁶³ As this post would
7 be such uncompensated Internet activity if posted by Waddell, his actions do not constitute
8 making an in-kind contribution.

9 On the other hand, the “uncompensated Internet activities” exception does not apply to
10 the activities of Bone Collector and the post on its Brotherhood Blog. The exception does not
11 apply to a corporation that “derive[s] a substantial portion of its revenues from sources other than
12 income from Internet activities.”⁶⁴ As discussed above, Bone Collector derives revenue through
13 its sale of branded hunting equipment and merchandise as well as using its “Brotherhood Blog”
14 as a vehicle to endorse products for a fee. Consequently, Bone Collector, through its website,
15 engages in the kind of commercial activity that takes it outside the “uncompensated Internet
16 activities” exception and makes its republication of the Trump campaign video an in-kind
17 contribution.

⁶² 11 C.F.R. § 100.94.

⁶³ 11 C.F.R. § 100.94(b). This exemption includes an individual’s “uncompensated personal services related to such Internet activities” and “use of equipment or services for uncompensated Internet activities.” 11 C.F.R. § 100.94(a)(1)-(2).

⁶⁴ 11 C.F.R. § 100.94(d). When the Commission included this exception in its regulations, it intended the exception to apply to bloggers who have incorporated, whether for tax, liability or other purposes, even if they happen to generate some revenue from their website. *See* 2006 Internet Communications E&J, 71 Fed. Reg. at 18,606. But the provision was not intended to create “an overly broad exception to the definitions of ‘contribution’ and ‘expenditure’ that would encompass the activities of any corporation engaged in online activities merely as a platform for other commercial activities.” *Id.*

1 Bone Collector's contribution is potentially excessive, or, if a corporate contribution,⁶⁵ an
2 impermissible contribution to which Waddell consented. While the exact value of this in-kind
3 contribution is unknown, it seems unlikely that a single advertisement on the Bone Collector
4 website is of substantial value, and thus further investigation does not appear to be an efficient
5 use of Commission resources. Accordingly, we recommend that the Commission dismiss the
6 allegations that Waddell and Bone Collector violated 52 U.S.C. §§ 30116(a) and 30118(a).⁶⁶

7 **IV. RECOMMENDATIONS**

- 8 1. Find no reason to believe that Michael Waddell or Bone Collector, LLC violated
9 52 U.S.C. § 30104(c)(1);
- 10 2. Dismiss the allegation that Michael Waddell and Bone Collector, LLC violated
11 52 U.S.C. § 30120;
- 12 3. Dismiss the allegation that Michael Waddell and Bone Collector, LLC violated
13 52 U.S.C. §§ 30116(a) and 30118(a);
- 14 4. Approve the attached Factual and Legal Analysis;
- 15 5. Close the file; and
- 16 6. Approve the appropriate letters.

17
18
19 Lisa J. Stevenson
20 Acting General Counsel

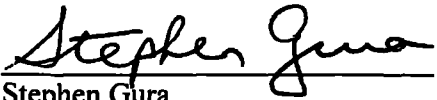
21
22 Kathleen M. Guith
23 Associate General Counsel
24 for Enforcement
25
26
27

⁶⁵ See 11 C.F.R. § 110.1(g) (contributions by an LLC that has elected to be treated as a partnership or a corporation for tax purposes shall be treated as partnership or corporate contributions, respectively). See also 11 C.F.R. § 110.1(e) (treatment of partnership contributions).

⁶⁶ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

03-30-2018

Date



Stephen Gura
Deputy Associate General Counsel
for Enforcement



Mark Allen
Assistant General Counsel



Nicholas O. Mueller
Attorney

Attachment:
Factual and Legal Analysis

CONFIDENTIAL

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Michael Waddell
5 Bone Collector, LLC

MUR: 7279

6
7 **I. INTRODUCTION**

8 This matter involves allegations that Michael Waddell and Bone Collector, LLC ("Bone
9 Collector") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by
10 failing to disclose independent expenditures, failing to include required disclaimers on Facebook
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16 supports Trump and links to the Bone Collector website, which republishes a video produced by
17 the Trump campaign.² The Complaint alleges that this republication constitutes an excessive in-
18 kind contribution to the Trump Committee.³

19 In response, Waddell states that he has not violated the Act because: (1) he spent less
20 than \$250 to promote his post; (2) this paid post did not require a disclaimer because it did not
21 contain express advocacy; and (3) he did not pay to republish Trump campaign materials.⁴

¹ Compl. ¶¶ 8, 22-23, 27-28 (Sept. 26, 2017).

² *Id.* ¶¶ 6-7.

³ *Id.* ¶¶ 24-26.

⁴ Resp. at 4-6 (Oct. 31, 2017).

1 As set forth below, available information indicates that Waddell spent \$99.96 to make
2 one independent expenditure and did not include any disclaimer in that communication.
3 Accordingly, the Commission finds no reason to believe that Waddell violated the Act by failing
4 to report independent expenditures exceeding the \$250 reporting threshold. Further, the
5 Commission dismisses the allegation that Waddell failed to include the required disclaimer in
6 this communication because the communication gave the viewer at least some indication who
7 was responsible for the message.

8 Also as discussed below, it appears that by republishing, in whole, the Trump campaign's
9 video on the Bone Collector website, Bone Collector made a potentially excessive in-kind
10 contribution to the Trump Committee, or, if Bone Collector is a corporation, an impermissible
11 contribution to which Waddell consented. While the exact value of this in-kind contribution is
12 unknown, it is likely modest, and thus does not justify the use of the Commission's investigatory
13 resources. Accordingly, the Commission dismisses allegations that Waddell and Bone Collector
14 violated 52 U.S.C. §§ 30116(a) and 30118(a).

15 II. FACTS

16 A. Michael Waddell and Bone Collector, LLC

17 Michael Waddell is the founder and part-owner of Bone Collector, LLC.⁵ Bone
18 Collector is registered as an LLC in both Illinois and Georgia.⁶ Through its website,
19 bonecollector.com, Bone Collector sells various products including hunting equipment, apparel

⁵ Michael Waddell Aff. ¶ 3 (Oct. 31, 2017).

⁶ Bone Collector, LLC, Registration with Ill. Sec. of St., available through search at:
<https://www.ilsos.gov/corporatellc/CorporateLlcController>; Bone Collector, LLC, Registration with Ga. Corp Div.,
[https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1350723&businessType=Domestic%20Li](https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1350723&businessType=Domestic%20Limited%20Liability%20Company)
[mited%20Liability%20Company](https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=1350723&businessType=Domestic%20Limited%20Liability%20Company).

1 featuring the Bone Collector logo, and DVDs of the Bone Collector television show on the
2 Outdoor Channel, which features Waddell.⁷ Also included on the website is the “Brotherhood
3 Blog,” which includes posts featuring videos of Waddell and others demonstrating hunting
4 techniques and promoting hunting products. Based on the overt nature of these product
5 endorsements,⁸ links from the blog directly to the websites of the companies selling these
6 products, and a link on bonecollector.com soliciting companies that may be interested in
7 advertising with Bone Collector,⁹ it appears that these Brotherhood Blog posts are often
8 commercial endorsements paid for by companies selling products featured on the blog.

9 Waddell and Bone Collector also maintain a Facebook page, “Michael Waddell’s Bone
10 Collector,” which has been “liked” over 900,000 times.¹⁰ On this page, Waddell posts text,
11 images, and videos about hunting, and in the months leading up to the 2016 presidential election,
12 he also posted material supporting then-candidate Donald Trump and opposing Hillary Clinton.¹¹
13 The page also promotes the Bone Collector’s brand and products through posts, as well as links
14 through which visitors may buy Bone Collector products directly.¹²

⁷ See <https://www.bonecollector.com>.

⁸ See, e.g., <https://www.bonecollector.com/3-great-things-non-typical-clothing-drake/>.

⁹ <https://www.bonecollector.com/advertising/>.

¹⁰ Compl. ¶ 5.

¹¹ <https://www.facebook.com/officialbonecollector/>

¹² *Id.*

B. “Michael Waddell’s Bone Collector” Sponsored Facebook Post

Among the posts on the “Michael Waddell’s Bone Collector” Facebook page, two are particularly relevant to this matter.¹³ The first involves a video of Waddell stating that Hillary Clinton does not support “our hunting heritage.”¹⁴ The response explains that, at the request of Keith Mark, a friend in the hunting industry, Waddell recorded a 24-second video that was later incorporated in a longer video the Trump campaign produced entitled “Heartland for Trump.”¹⁵ The response further states that the 24-second video was shot with Waddell’s own camera and with the help of “an experienced camera operator,” who shot the video “as a favor.”¹⁶ Waddell indicates that the total time spent recording this video was five-to-ten minutes.¹⁷ In the video, Waddell states:

I’m so proud to be from a hunting family. And I can tell you I thank God every day for having an opportunity to put food on my table for my family, just like so many families before us. And when hunting becomes politically incorrect, let me tell you something. America has lost its way. And I believe personally that Hillary Clinton will never, ever support our hunting heritage.¹⁸

¹³ An additional related post on the Facebook timeline, posted September 26, 2016, also includes a link directly to the Heartland for Trump campaign video on YouTube and is accompanied by the following text: “Really cool video from outdoorsmen prospective. Please watch and share. Waddy.” Michael Waddell’s Bone Collector, Post to Facebook (Sept. 26, 2016), <https://www.facebook.com/officialbonecollector/posts/10155207745784409>. The response does not address this additional post. It does not appear that any payment was made to promote the post.

¹⁴ Resp. at 7.

¹⁵ Waddell Aff. ¶¶ 6-8. Like Waddell, Keith Mark is a personality featured in hunting shows on the Outdoor Channel. See <http://outdoorchannel.com/keith-mark-hunter-and-outfitter>.

¹⁶ Waddell Aff. ¶ 8.

¹⁷ *Id.* ¶¶ 7-8.

¹⁸ Resp. at 7.

1
2 According to Waddell, on September 24, 2016, he paid \$99.96 to Facebook to promote or
3 “boost”¹⁹ the distribution of the post containing this 24-second video, which gathered 104,595
4 “impressions” on Facebook.²⁰ Waddell provides a receipt to confirm the amount of this payment,
5 which is also supported by his sworn affidavit.²¹ Though this post no longer appears in
6 Waddell’s Facebook timeline, it can be viewed by following a link provided by the response.²²
7 The link shows four versions of the promoted post that Facebook users saw, each of which
8 included either the text: “#TrumpTrain #Trump2016” or “Sportsmen for Trump 2016.”²³

9 **C. Heartland for Trump Campaign Video**

10 As noted above, Waddell states that he gave the 24-second video to Keith Mark and it
11 was later incorporated into the Heartland for Trump campaign video.²⁴ The Heartland for Trump
12 video is eight minutes and ten seconds long and features Donald Trump, Donald Trump, Jr., and
13 a number of hunting and outdoor television show personalities, including Waddell and Mark.²⁵
14 It appears to be an official Trump campaign video and includes a disclaimer at the end that it is

¹⁹ Facebook allows users to advertise by turning an ordinary post into an ad that will appear on the Facebook pages of a targeted audience even though many in that audience do not currently follow the person posting. See https://www.facebook.com/business/help/240208966080581?helpref=page_content.

²⁰ In short, Facebook defines “impressions” as “the number of times your ads were on screen.” <https://www.facebook.com/business/help/675615482516035>. Resp. at 3, Ex. 2.

²¹ *Id.*, Ex. 2; Waddell Aff. ¶ 9.

²² Resp. at 7 (citing Facebook Ad Experience preview (Sept. 24 2016), https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816).

²³ Facebook Ad Experience preview, https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816. The first and second versions both include the text: “#TrumpTrain #Trump2016.” *Id.* The third and fourth versions include the text: “Sportsmen for Trump 2016.” *Id.*

²⁴ Waddell Aff. ¶ 6. See Heartland for Trump (Sept. 26 2016), https://www.youtube.com/watch?time_continue=10&v=k0J_EKmvYZk.

²⁵ *Id.*

1 “Paid for by Donald J. Trump for President, Inc.”²⁶ The available information does not indicate
2 whether Waddell shot the video so that it could be later incorporated into the Heartland for
3 Trump video, nor does it explain the relationship between Mark and the Trump campaign,
4 including whether Mark was acting on the campaign’s behalf or whether he or the campaign had
5 input into the content of Waddell’s video.²⁷

6 **D. Republication of Heartland for Trump Video**

7 A screenshot of the second relevant Facebook post by Waddell appears below, and as of
8 the date of this report, the post still appears on his timeline.²⁸

²⁶ *Id.*

²⁷ A review of the Committee’s disclosure reports to the Commission indicates that the Committee made no disbursements to Mark in the 2016 campaign cycle.

²⁸ Compl. ¶ 6 (citing Michael Waddell’s Bone Collector, Post to Facebook (Sept. 27, 2016), <https://www.facebook.com/officialbonecollector/posts/10155210022799409>). Facebook indicates that this post was liked 11,000 times, commented on 406 times, and shared 4,500 times. *Id.*



1

2 This post links to a Brotherhood Blog post on the Bone Collector website. This Brotherhood

3 Blog post, titled “Trump For President | Why Outdoorsmen and Women Should Consider Voting

4 Trump,” republishes the Heartland for Trump video created by the Trump campaign and includes

5 a link to the Trump Committee’s website.²⁹ Waddell avers that he “did not spend any money

6 boosting or promoting this Facebook post.”³⁰

29 <https://www.bonecollector.com/video-outdoorsmen-women-consider-voting-trump/>.

30 Resp. at 3; Waddell Aff. ¶ 10.

1 **III. LEGAL ANALYSIS**

2 **A. Independent Expenditure Disclosure**

3 The complaint alleges that Waddell and Bone Collector violated the Act by failing to
4 disclose as an independent expenditure the boosted Facebook post containing the 24-second
5 video of Waddell.³¹ The Act defines “expenditure” as “any purchase, payment, distribution,
6 loan, advance, deposit, or gift of money or anything of value made by any person for the purpose
7 of influencing any election for Federal office.”³² An “independent expenditure” is an
8 expenditure by a person expressly advocating the election or defeat of a clearly identified federal
9 candidate that is not made in concert or cooperation with or at the request or suggestion of such
10 candidate, the candidate’s authorized political committee, or their agents, or a political party
11 committee or its agents.³³ Every person, other than a political committee, who makes
12 independent expenditures over \$250 in a calendar year must disclose those expenditures in
13 reports to the Commission.³⁴

14 In determining whether a communication contains express advocacy, the Commission
15 analyzes the message under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R.

31 Compl. ¶¶ 22-23.

32 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111.

33 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16. *See also* 11 C.F.R. § 100.16(c) (excluding from the definition of independent expenditure “if the person making the expenditure allows a candidate, a candidate’s authorized committee, or their agents, or a political party committee or its agents to become materially involved in decisions regarding the communication as described in 11 CFR 109.21(d)(2), or shares financial responsibility for the costs of production or dissemination with any such person.”).

34 52 U.S.C. § 30104(c)(1).

1 § 100.22(b).³⁵ A communication expressly advocates the election or defeat of a clearly identified
2 federal candidate under Section 100.22(a) if it uses phrases including, but not limited to,
3 “Support the Democratic nominee” and “vote against Old Hickory” or “‘defeat’ accompanied by
4 a picture of one or more candidates,” or “reject the incumbent,” or “communications of campaign
5 slogan(s) or individual word(s), which in context can have no other reasonable meaning than to
6 urge the election or defeat of one or more clearly identified candidates such as posters, bumper
7 stickers, advertisements, etc., which say ‘Nixon’s the One,’ ‘Carter ’76,’ ‘Reagan/Bush,’ or
8 ‘Mondale!’” or “vote Pro-Life” or “vote Pro-Choice” with a listing of clearly identified
9 candidates described as Pro-Life or Pro-Choice.³⁶ Express advocacy also encompasses a
10 communication that contains “in effect an explicit directive” to vote for or against a candidate.³⁷
11 The fact that this message is marginally less direct than “Vote for Smith” does not change its
12 essential nature.³⁸

13 Waddell claims that the boosted video does not contain express advocacy language and
14 therefore is not an independent expenditure.³⁹ The text accompanying the video in the post,
15 however, including “#TrumpTrain #Trump2016” and “Sportsmen for Trump 2016,” constitutes

³⁵ Political Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007) (supplemental explanation and justification).

³⁶ 11 C.F.R. § 100.22(a). The Commission explained that the phrases enumerated in 11 C.F.R. § 100.22(a), such as “Smith for Congress” and “Bill McKay in ’94,” have no other reasonable meaning than to urge the election or defeat of a clearly identified candidate. *See* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294-95 (July 6, 1995) (explanation and justification).

³⁷ *See FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986) (a communication is express advocacy when “it provides, in effect, an explicit directive” to vote for the named candidates) (“*MCFL*”).

³⁸ *See MCFL*, 479 U.S. at 249.

³⁹ *Resp.* at 5.

1 express advocacy.⁴⁰ Similar to the examples included in the regulation, these hashtags/slogans
2 included in Waddell's post "in context can have no other reasonable meaning than to urge the
3 election or defeat of one or more clearly identified candidates."⁴¹ Therefore, this Facebook post
4 that Respondents paid to promote is an independent expenditure.⁴²

5 Waddell provided a receipt for the promotion of this post, however, which supports his
6 sworn statement that he paid \$99.96,⁴³ which is below the \$250 reporting threshold.⁴⁴ In
7 addition, Waddell claims that production of this 24-second video involved only volunteers
8 (Waddell and the camera operator who shot the video "as a favor"); it took ten minutes or less of
9 Waddell's time to record; and the video was recorded with Waddell's own camera.⁴⁵ The
10 Commission has no contrary information. Thus, the cost to produce the video appears minimal
11 and likely would not have increased the total cost of the independent expenditure over the \$250
12 threshold. Therefore, the Commission finds no reason to believe that Waddell or Bone Collector
13 violated 52 U.S.C. § 30104(c)(1) by failing to disclose this independent expenditure.

⁴⁰ Facebook Ad Experience preview,
https://www.facebook.com/ads/experience/confirmation/?experience_id=585573171617816. See *supra* n.23.

⁴¹ 11 C.F.R. § 100.22(a). In addition to satisfying the test for express advocacy under 100.22(a), the post likely satisfies the standard for express advocacy under 100.22(b). However, because the communication clearly satisfies 100.22(a), it is unnecessary to analyze it under 100.22(b) to make reason to believe findings in this particular case.

⁴² The Commission has elected to analyze this activity as an independent expenditure, as alleged in the complaint, rather than as a potential in-kind contribution as there is insufficient information that the communication was coordinated with the Trump campaign. While the recording of this video was done at Mark's request, and it was ultimately incorporated into the Heartland for Trump video, the Commission has no information indicating that the Trump campaign was involved in determining the content of this 24-second video or Waddell's posting of the 24-second video to Facebook.

⁴³ See Waddell Aff. ¶ 9; Resp., Ex. 2.

⁴⁴ See 52 U.S.C. § 30104(c)(1).

⁴⁵ Waddell Aff. ¶ 7-8.

B. Disclaimers

The Complaint further alleges that Waddell and Bone Collector failed to include a required disclaimer on the Facebook post discussed above.⁴⁶ All “public communications” by a person that expressly advocate the election or defeat of a federal candidate must contain appropriate disclaimers.⁴⁷ “Public communications” include “general public political advertising,” which includes communications over the Internet when those communications are “placed for a fee on another person’s Web site.”⁴⁸

Respondents assert that they are not subject to these disclaimer provisions because the boosted video posted to Facebook does not contain express advocacy.⁴⁹ As discussed above, the paid post includes the hashtags/slogans “#TrumpTrain #Trump2016” and “Sportsmen for Trump 2016,” which are express advocacy. Respondents acknowledge that a fee was paid to boost this post.⁵⁰ Therefore, the post is a public communication containing express advocacy, and the Act appears to require a disclaimer in such circumstances.

However, in three of the four versions of the post, “Michael Waddell’s Bone Collector” appeared on the top of the post, which provided the public with some information as to the

⁴⁶ Compl. ¶¶ 27-28.

⁴⁷ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

⁴⁸ 11 C.F.R. § 100.26; *see also* Regulations of Internet Communications 71 Fed. Reg. 18,589, 18,593-94 (Apr. 12, 2006) (explanation and justification) (“2006 Internet Communications E&J”); Advisory Op. 2017-12 (Take Back Action Fund).

⁴⁹ Resp. at 6-8.

⁵⁰ Resp. at 6.

1 persons responsible for the message. Under these circumstances, the Commission dismisses the
2 allegation that that Waddell and Bone Collector violated 52 U.S.C. § 30120.⁵¹

3 **C. Alleged Prohibited and Excessive In-Kind Contributions**

4 Finally, as a result of republishing the Heartland for Trump campaign video, Waddell and
5 Bone Collector may have made prohibited or excessive in-kind contributions to the Trump
6 Committee. During the 2016 election cycle, no individual could make a contribution to a
7 candidate and the candidate's authorized political committee with respect to any election for
8 federal office that in the aggregate exceeded \$2,700.⁵² Further, the Act prohibits corporations
9 from making contributions to candidates or their committees in connection with federal elections
10 and prohibits corporate officers and directors from consenting to such corporate contributions.⁵³

11 A "contribution" includes any direct or indirect payment, gift of money, or "anything of
12 value" made to any candidate or campaign committee in connection with any federal election.⁵⁴
13 "Anything of value" includes in-kind contributions, such as the provision of goods or services
14 without charge, or at a charge less than the usual and normal charge.⁵⁵ Commission regulations

⁵¹ Compare with Factual & Legal Analysis at 5-6, MUR 7039 (Bernie 2016, *et al.*) (dismissing allegation that Facebook ad did not include a required disclaimer where the ad provided some information to the public indicating the Committee that was responsible for the ad, including the committee's web address, the landing page of which included a fully compliant disclaimer). See also EPS Dismissal Report at 2, MUR 7065 (Joe Montes for Congress 2016) (dismissing allegation regarding the failure to include the required disclaimer where "it is unlikely that the general public would have been misled"); EPS Dismissal Report at 2-3, MUR 6904 (Cat Ping for Congress) (dismissing allegation regarding the failure to include the required disclaimer citing the small amount at issue and unlikelihood that the public was misled as to who paid for the website).

⁵² 52 U.S.C. § 30116(a)(1)(A).

⁵³ 52 U.S.C. § 30118(a).

⁵⁴ 52 U.S.C. § 30118(b)(2); 11 C.F.R. §§ 100.52(d)(1), 114.1(a)(1); see also 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

⁵⁵ 11 C.F.R. § 100.52(d)(1). The Commission's regulations define "usual and normal charge" as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R. § 100.52(d)(2).

1 specify that impermissible corporate contributions include providing free or reduced-charge
2 facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing
3 lists.⁵⁶ Moreover, Commission regulations state that the republication of campaign materials
4 prepared by a candidate's authorized committee is "considered a[n in-kind] contribution for the
5 purposes of contribution limitations"⁵⁷ because the person financing the republication "has
6 provided something of value to the candidate [or] authorized committee."⁵⁸

7 Here, the post to the Brotherhood Blog (on the Bone Collector website) that republishes
8 the Heartland for Trump video is such an in-kind contribution. As discussed above, the
9 Brotherhood Blog consists of a series of posts, many of which appear to be paid endorsements
10 for hunting products.⁵⁹ Thus, it appears this blog is not simply a forum for Waddell to discuss
11 hunting, but it is also a location for paid advertisements. While makers of various hunting
12 products have paid to place their ads on the Brotherhood Blog, this republished Trump campaign
13 video appears to have been placed for free. Therefore, this republication of the Heartland for
14 Trump video on the Bone Collector's Brotherhood Blog appears to constitute providing

⁵⁶ See 11 C.F.R. § 100.52(d)(1).

⁵⁷ 11 C.F.R. § 109.23(a).

⁵⁸ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (explanation and justification). As the Commission there explained, "Congress has addressed republication of campaign material through [52 U.S.C. § 30116(a)(7)(B)(iii)] in a context where the candidate/author generally views the republication of his or her campaign materials, *even in part*, as a benefit" and can be reasonably construed only as for the purpose of influencing an election." *Id.* at 443 (emphasis added); see also Coordinated Communications, 71 Fed. Reg. 33,190, 33,191 (June 8, 2006) (explanation and justification) (communications "that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.").

⁵⁹ See *supra* p.3, n.8.

1 “advertising services” “without charge or at a charge that is less than the usual and normal
2 charge” and falls within the regulation’s definition of an in-kind contribution.⁶⁰

3 Respondents argue that because Waddell spent no money to boost the post that
4 republishes Trump campaign materials, “it does not fall within the restrictions of 11 C.F.R.
5 § 109.23(a).”⁶¹ Indeed, Waddell has not made an in-kind contribution via this Facebook post,
6 but for a different reason. Instead, his activity is not considered a contribution because
7 Commission regulations create an exception for “uncompensated Internet activities.”⁶² Such
8 Internet activities include but are not limited to: “Sending or forwarding electronic messages;
9 providing a hyperlink or other direct access to another person’s Web site; blogging; creating,
10 maintaining, or hosting a Web site; paying a nominal fee for the use of another person’s Web
11 site; and any other form of communication distributed over the Internet.”⁶³ As this post would be
12 such uncompensated Internet activity if posted by Waddell, his actions do not constitute making
13 an in-kind contribution.

14 On the other hand, the “uncompensated Internet activities” exception does not apply to
15 the activities of Bone Collector and the post on its Brotherhood Blog. The exception does not
16 apply to a corporation that “derive[s] a substantial portion of its revenues from sources other than
17 income from Internet activities.”⁶⁴ As discussed above, Bone Collector derives revenue through

⁶⁰ 11 C.F.R. § 100.52(d)(1).

⁶¹ Resp. at 6.

⁶² 11 C.F.R. § 100.94.

⁶³ 11 C.F.R. § 100.94(b). This exemption includes an individual’s “uncompensated personal services related to such Internet activities” and “use of equipment or services for uncompensated Internet activities.” 11 C.F.R. § 100.94(a)(1)-(2).

⁶⁴ 11 C.F.R. § 100.94(d). When the Commission included this exception in its regulations, it intended the exception to apply to bloggers who have incorporated, whether for tax, liability or other purposes, even if they

1 its sale of branded hunting equipment and merchandise as well as using its “Brotherhood Blog”
2 as a vehicle to endorse products for a fee. Consequently, Bone Collector, through its website,
3 engages in the kind of commercial activity that takes it outside the “uncompensated Internet
4 activities” exception and makes its republication of the Trump campaign video an in-kind
5 contribution.

6 Bone Collector’s contribution is potentially excessive, or, if a corporate contribution,⁶⁵ an
7 impermissible contribution to which Waddell consented. While the exact value of this in-kind
8 contribution is unknown, it seems unlikely that a single advertisement on the Bone Collector
9 website is of substantial value, and thus further investigation does not appear to be an efficient
10 use of Commission resources. Accordingly, the Commission dismisses the allegations that
11 Waddell and Bone Collector violated 52 U.S.C. §§ 30116(a) and 30118(a).⁶⁶

happen to generate some revenue from their website. *See* 2006 Internet Communications E&J, 71 Fed. Reg. at 18,606. But the provision was not intended to create “an overly broad exception to the definitions of ‘contribution’ and ‘expenditure’ that would encompass the activities of any corporation engaged in online activities merely as a platform for other commercial activities.” *Id.*

⁶⁵ *See* 11 C.F.R. § 110.1(g) (contributions by an LLC that has elected to be treated as a partnership or a corporation for tax purposes shall be treated as partnership or corporate contributions, respectively). *See also* 11 C.F.R. § 110.1(e) (treatment of partnership contributions).

⁶⁶ *See Heckler v. Chaney*, 470 U.S. 821 (1985).